

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6151

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO MARKEYES SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Mark S. Davis, District Judge. (2:10-cr-00030-MSD-FBS-1)

Submitted: June 28, 2011

Decided: July 13, 2011

Before KING and DAVIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Mario Markeyes Smith, Appellant Pro Se. Sherrie Scott Capotosto, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mario Markeyes Smith appeals from the district court's order dismissing without prejudice his 18 U.S.C. § 3582(c)(2) (2006) motion for a sentence reduction. Although the court did not address Smith's claim based upon Amendment 706 to the Sentencing Guidelines, we conclude that the district court's denial of relief was nevertheless proper. Smith was sentenced in accordance with the 2009 Sentencing Guidelines, which incorporated Amendment 706. As for Smith's claim that his sentence should have been reduced in light of the Fair Sentencing Act of 2010, the district court properly found that the Act did not apply retroactively to his case. United States v. Bullard, ___ F.3d ___, ___ 2011 WL 1718894, at *9-*11 (4th Cir. May 6, 2011) (No. 09-5214). Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED